Milton Town Council PUBLIC HEARING Milton Library 121 Union Street Monday, January 16, 2014, 6:00 p.m.

Transcriptionist: Helene Rodgville [Minutes are not Verbatim]

- 1. Call to Order Mayor Jones
- 2. Moment of Silence
- 3. Pledge of Allegiance to the Flag
- 4. Roll Call Mayor Jones

Vice Mayor Booros Present
Councilman West Present
Councilwoman Patterson Present
Councilwoman Parker-Selby Present
Councilman Collier Present
Mayor Jones Present
Councilman Coté Absent

5. Public Hearing on the following:

<u>Mayor Jones</u>: We're here for a number of Chapter 220 issues. For any public participation, any comments, certainly step to the microphone and state your name and be orderly, please; no rushing the room. Thank you.

a. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning", relating to amendments to the zoning code

Don Mazzeo, 113 Isle Lane: I appear on behalf of the Planning and Zoning Commission, as Chairman, and I believe each of you have already received a copy of a letter addressed to Mayor Jones and the Council dated December 26th. My purpose here this evening is to make sure this letter gets read into the record. "Dear Mayor Jones and Town Council Members. The members of the Town of Milton Planning and Zoning Commission, are unanimous in our opposition to the proposed changes to Code 220-99, which would eliminate the requirement that zoning changes be referred to the Planning and Zoning Commission to solicit this body's recommendations. Our strong opposition is borne of the following concerns: this action flies in the face of the Town's desire to establish a system of checks and balances that is essential to prudent and democratic governance. Next, we believe that our Town should strive to make the use of particular knowledge and Best Practices mandatory, not optional. By making consultation with the Planning and Zoning Commission optional, this action also makes the use of particular knowledge and experience, optional. We believe this action creates an environment of uncertainty for prospective businesses and investors. This action reduces due process by truncating the decision-making processes and limiting opportunities for public engagement and comment. This action does not advance the Town's deliberative

development process and finally, this action, which is intended to create a more business-friendly environment, does nothing to address what we believe are the real obstacles to business development here in Milton. We believe this objective can be best advanced to providing information, training and supervision. Per Code 220-99 and in light of the Planning and Zoning Commission's recommended disapproval, the proposed change would require a four-fifths vote by Town Council. We encourage Town Council members to vote against this change. Respectfully, Donald Mazzeo, Chairman of Planning and Zoning."

<u>Mayor Jones</u>: Thank you. Is there anyone else that would like to speak to item a on the agenda this evening, 5a?

<u>Seth Thompson</u>: Kristy, were there any written comments received ahead of time?

<u>Kristy Rogers</u>: No. Seth Thompson: No.

b. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning", relating to section 52 antennas, towers, and satellite dishes

<u>Mayor Jones</u>: We'll move on to 5b. Is there anyone from the public that would like to speak on behalf of this topic? Hearing none, we move on to 5c.

<u>Seth Thompson</u>: Kristy, were there any written comments received on that Draft Ordinance?

Kristy Rogers: No.

c. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning" related to Parking

<u>Mayor Jones</u>: Is there anyone in the public that would like to speak on this change?

Seth Thompson: Kristy, any written comments?

Kristy Rogers: No.

d. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning" related to Special Uses

<u>Mayor Jones</u>: We move onto 5d. Is there anyone in the audience that would like to speak to this topic?

<u>Seth Thompson</u>: Any written comments, Kristy?

Kristy Rogers: No.

<u>Mayor Jones</u>: Having opened the public hearing, having gone through 5a, b, c and d, no further comments, we close this portion of the public hearing at 6:06 p.m.

- 6. Discussion and potential vote on the following:
 - a. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning", relating to amendments to the zoning code

<u>Mayor Jones</u>: I'm going to turn this over to Mr. Thompson for some explanation for all of us.

<u>Seth Thompson</u>: With regard to item 6a, just a brief explanation of the Ordinance. This Ordinance, in my mind, clears up an ambiguity that exists in the Code with regard to the process for amending any zoning ordinance within our Code. Basically, if you look at the Article and it's Article XIIII under Amendments, Section 220-98 lays out the

procedure and then Section 220-99 discusses the Advisory Report to Town Council. The ambiguity that I see is in the initial sentence within 220-98. It discusses the fact that the Town Council of the Town of Milton may from time to time, on it's own motion, or on petition, or upon recommendation by the Planning and Zoning Commission, amend, supplement or change by Ordinance, the boundaries of the Districts or the Regulations. So, again, it lays out three potential procedural steps that would lead to an amendment to either the boundaries of the districts or the regulations. So seemingly on it's own motion would mean that the Town could act, just at it's own behest, the Town Council that is. That, in my mind, conflicts with 220-99 that says "Every proposed amendment unless initiated by the Planning and Zoning Commission shall be referred to Town Council." So the Ordinance that's in front of you changes the "shall" to "may", in that section so that basically the Town Council would have the discretion to provide it, to assign it to Planning and Zoning for an Advisory Report. That's the effect. The only other language that's changed is there's an "if referred" added to the beginning of the sentence that says "The Planning and Zoning Commission shall report in writing." I know this one's been discussed a lot, from the technical standpoint, obviously there isn't a lot of language to discuss. It's really, in my mind, it's a policy decision for Town Council. The question is on one side and you can see the Planning and Zoning Commission's concerns, that we have a deliberative process, where there are a number of opportunities for the public to hear what's going on and on the other side, seemingly, you occasionally have the need to act quickly and an additional 45 days waiting on a report might not serve those purposes. So again, this is really a policy issue, in my mind, on which way the Town wants to go. I suspect that the drafter's of the Code that indicated that a Planning and Zoning Commission Advisory Report would be involved, looked to Title XXII of the Delaware Code, Chapter 3, regarding Municipal Zoning and at the outset, when municipalities were allowed to enact their own zoning ordinance, they had to at that point, go through a Planning and Zoning process. In my mind, that's because there was a blank slate and they needed somebody to do the heavy lifting at that point. But, again, that was when the Town's were enacting their first zoning ordinances. I'm only speculating, but it could be that when your Code was enacted, people felt that process was a good idea in having it go to Planning and Zoning, hence the language in terms of the Advisory Report.

Vice Mayor Booros: Madame Mayor, can I ask a question?

Mayor Jones: Certainly.

<u>Vice Mayor Booros</u>: Did all four of these Ordinances that are up for discussion and potential vote, come with recommendations from Planning and Zoning? Did they all go to Planning and Zoning for their recommendation?

<u>Seth Thompson</u>: They have all gone to Planning and Zoning. I don't know if the written reports... I'm sorry. I don't think the written reports have been received or approved with regard to three of them. Obviously...

<u>Vice Mayor Booros</u>: So if I don't know what anyone's saying from Planning and Zoning on those three, why are they on tonight's agenda to begin with? Start right there. I would like to know what they have to say since we shall send it there and we did; why would it be before me without their recommendation yea or nay? We only heard the one recommendation from Mr. Mazzeo on the first one.

Seth Thompson: And I can report, in terms of what occurred at the Planning and Zoning

level, because I did attend those meetings, as far as a written report, I don't believe one was issued with regard to the other three.

Vice Mayor Booros: Okay, well then at that point, I would ask that maybe we take these out of order and save this one for last, because I'd like to address something in the next one and if it's already been before Council and Planning and Zoning I'd like to talk about the next Ordinance, as well as another one. Well I'll give you an example of one today and I asked Seth in the hallway. The one that you just submitted to Planning and Zoning when I wasn't there last week, or the week before, whenever the meeting was, on the constitutionality of our how many feet away from a school or a childcare or a healthcare, whatever... it's a constitutional law issue and I would think that before it ever went to anyone on Planning and Zoning, that we "shall" send it to you; maybe we should have sent it to the Attorney General's Office for a ruling on what's constitutional and what's not, because quite honestly I don't think there's anyone on Planning and Zoning that can tell us that. I just think that that was one of those cases, where that one didn't need to go to Planning and Zoning. That one needs to go somewhere else and quite honestly if the State says it needs to be changed, it doesn't necessarily need to go to Planning and Zoning. One example. Now, if you would table this until at least through the next one on dishes, I'll give you a second example.

Seth Thompson: I'll just respond quickly. I wouldn't view asking for an Advisory Opinion from the Attorney General as being exclusive of sending something to Planning and Zoning. When it comes to the sex offender ordinance, that's based on the Town's... the reason the Town has the authority to enact that is because of it's zoning authority; so because it involves... I recognize it's not in your Zoning Code, but because it's a zoning regulation, the argument is, it needs to go through the process of going to Planning and Zoning anyway.

<u>Vice Mayor Booros</u>: Because the process currently exists.

Seth Thompson: Right. That's right.

<u>Vice Mayor Booros</u>: If the process didn't exist, I would even think before, even if we did send it to Planning and Zoning, we'd have gotten an advisory thing from the Attorney General's Office as to what the constitutionality... I'm not going to argue this point. I'm just saying, there are issues that I know that shouldn't go to Planning and Zoning, because there's no one on Planning and Zoning that can make that determination or that can advise us in any way that the constitutional law lawyer, the Attorney General's Office... that anybody. There's nobody on Planning and Zoning that can make those recommendations to us. Either we didn't do our due diligence before we sent it to Planning and Zoning, or it's one of those things that maybe shouldn't have gone to Planning and Zoning to begin with. It should have gone somewhere else. Like I said, if we move on and save this one for a vote for five minutes, until we pass by antenna ordinance, I'll give you another one that shouldn't go to Planning and Zoning; because apparently it came back without a written report and I'm going to tell you what the written report should have said.

<u>Mayor Jones</u>: Well, let me say that we did not have an opportunity to amend the agenda, at the start of this meeting.

Vice Mayor Booros: I understand that.

<u>Mayor Jones</u>: And I will also say that without written recommendations back from Planning and Zoning, I am not without empathy for exactly what you said. It would be

nice to see the report back; something back to us, but right now, I feel that we have to stick to the agenda, unless you're able to...

<u>Vice Mayor Booros</u>: Then let me give one more example, that it's going to be stepping on number two. I'll give you the example right now, before we even move onto number 2, because it applies to what goes to Planning and Zoning and what doesn't go to Planning and Zoning. As quick as a quick Google on can you put up an antenna? Can a Town request that you can't put up an antenna, there's an article from last year in USA Today that says you sure can and the Federal Telecommunications Act of 1996, tells you you can and when you go through those 111 pages, and you get to the page where it says, one little line here, within 100 days after this Act goes into effect, the Commission shall set up the rules and the regulations and the guidelines for antennas and dishes; which they did and I've got a copy for everybody here that I can wait until we move onto number 2 to pass out to you; but it gives all the reasons why you better be careful before enacting something saying that people can't have things in their backyard. Okay? Did anyone in Planning and Zoning catch it?

<u>Seth Thompson</u>: We did. We reviewed that. Vice Mayor Booros: Did you review this?

Seth Thompson: We did.

<u>Vice Mayor Booros</u>: And you still felt that what you sent to us in this ordinance covers this?

<u>Seth Thompson</u>: I guess we are moving onto this one now.

<u>Vice Mayor Booros</u>: No. No. No. I'm not moving on to it. I'm giving you an example of something that's plain and clear and I've read the way this ordinance is written and it doesn't comply with this. That's for sure. That's all I'm saying. This is something that is plain and clear. The Federal Government says this is the way it is. I don't need a recommendation from Planning and Zoning on what to do with this. It's in black and white, Federal Regulation. That's just one example of something that didn't need to go to you guys and be held up. We've been messing with this for months. It's gone from Historic Preservation; it's gone to Planning and Zoning; it's been through the legal counsel a couple of times. It's been to this Council a couple of times and this is something that was as quick as a Google, should have taken care of what needs taking care of.

<u>Mayor Jones</u>: Just on point, does that document say you cannot regulate where to put them? Does it say that Milton restricts what carrier you use is...

<u>Vice Mayor Booros</u>: It says that if you make them put it in the backyard and they're not getting good reception, you can't make them put it in the backyard. If it costs them more to install it in the backyard than in the front yard, you can't make them put it in the backyard. It says a lot of things.

Mayor Jones: Okay.

Seth Thompson: Except in the case of the Historic District and that was Planning and Zoning's recommendation; to enact the ordinance with regard to the Historic District. Vice Mayor Booros: In the Historic District there are also reasons that you can't make them put it in the backyard also, but none of those are in this ordinance. I'm just saying, this is something that was in plain black and white. I don't necessarily think it needed to go anywhere, for the recommendation, because the Federal Government has already told you what it is. I'm just saying. So that's my discussion on topic a. And the bottom line is

I just think there are certain things that maybe don't need a second opinion from Planning and Zoning and two of them happen to be on the agenda in the last few weeks. Mayor Jones: Would anyone else like to make a statement on Council, in reference to 6a?

Councilman Collier: I've contemplated this for a while and I'm not so sure that I'm... the way that I interpret this from my point-of-view is, this only gives us an option. It doesn't usurp any power from Planning and Zoning and I believe sometimes, in the interest of speed, there are some options that this plays into and on the other hand, there are times when we need their guidance. I recognize their ability's and I wish they'd recognize mine, because the feedback that I get with this letter is kind of like, you're leaving us out of the process, so you're taking half the brain away and I'm not so sure that I like that part.

Councilwoman Parker-Selby: I guess there were times when I sat on the Planning and Zoning I didn't get to every meeting, because I was still actively and an administrator in the school district, but I never felt what I read did the Commission or the Council felt at that time. May I ask when were the changes made with the Planning and Zoning, where they would feel that they have to write this type of response?

Mayor Jones: There were none made. In front of you is actually...

<u>Councilwoman Parker-Selby</u>: I mean what year? Because it was in the early 2000's when I was involved with Planning and Zoning, that's why I'm asking. Is this something... over the years have things changed that drastically that we have to be... That's my question.

<u>Mayor Jones</u>: No, that's actually... I want to make sure that I understand the question, but in front of you tonight is a potential to change the Chapter 220 to read that Council "may" refer, as opposed to "shall". Right now the ruling is and we live by every proposed amendment, unless initiated by the Planning and Zoning Commission, shall be referred by the Town Council to the Planning and Zoning.

Councilwoman Parker-Selby: Right. I understand.

<u>Mayor Jones</u>: Let me try to clarify something here for myself, too, and perhaps for you. Mr. Thompson can you be just a little bit more clear and give some examples of proposed amendments, unless initiated by Planning and Zoning? Can you give a differentiation between the two, as briefly as you can?

<u>Seth Thompson</u>: I'm sorry. I don't know if I understand what you're asking for. <u>Mayor Jones</u>: It says every proposed amendment, unless initiated by Planning and Zoning, shall be referred to Planning and Zoning.

<u>Seth Thompson</u>: Right, so if Planning and Zoning, on it's own, decides let's address this section of the zoning ordinance. This doesn't seem to make a lot of sense to us and they make a recommendation to Council to change some section; obviously Council wouldn't receive that recommendation and then refer it right back to Planning and Zoning.

<u>Mayor Jones</u>: So this is for any other suggested changes that were not initiated by Planning and Zoning. So that covers everything. Okay?

Councilwoman Parker-Selby: Okay.

<u>Seth Thompson</u>: Just for easy examples, if you wanted to change 15 days in the Code, to 20 days in the Code; if it's in your zoning ordinance or I think we had, at one of our meetings, a discussion about 200' in terms of notice going out to neighbor's within 200' of a boundary line; if Council wanted to change that in your zoning ordinance to 250', it

would get referred to Planning and Zoning.

<u>Mayor Jones</u>: And so Mr. Mazzeo's here and I wouldn't mind him speaking up again, if he needs to answer you councilwoman, but I assume that this letter to Council has come about as a result of the potential to change this. Okay? So, please feel free. We have very few people here tonight, you can feel free to ask Mr. Mazzeo if he's comfortable with that; if that's acceptable.

Councilwoman Parker-Selby: Well I was just wondering... we're pondering over this and I was also listening to Vice Mayor Booros with the information there and I do relate to what he's saying and I'm trying to make sure if I make my vote, it's the correct decision. I haven't been to your meetings. I have been involved on that Commission, so I know what it's about and things have changed since I was on there, so it's just a concern of mine, being on the Council, to look at this and I'm thinking what in the world? I'm trying to clarify in my mind making sure who makes the final decision here, Town Council, Planning and Zoning, are we working together; are we not working together? I'm just clarifying my mind in a lot of things.

Don Mazzeo: This letter was rapidly prepared and delivered to Mayor and Council in a direct response to this potential change, which was to basically remove Planning and Zoning and the public from the opportunity to have input. If, indeed, as Vice Mayor Booros has just indicated, there are certain times that indeed, it shouldn't come to Planning and Zoning, then perhaps it should be brought to the table at that time, that it should not go back. As an example, you have an FCC ruling there, I'm gathering? It should have never come to us; it would never have come to us; and perhaps it should have never left your table. It went to Historic Preservation, why? Let's not go any further down that path. To answer you question, nothing has really changed from the time you were there until now; but this potential change would remove Planning and Zoning from some, if not all, of the potential changes to the Zoning Code within Town. It's not going to eliminate us, because there are going to be times you, as Council, have no choice, I believe, but to forward it to Planning and Zoning. I have to refer to Solicitor to get that kind of response. Further, I would say that we are a cooperative body. Your recommendations to refer to Planning and Zoning are taken to heart. We take everything that you refer to us, under advisement. We look at everything as if we were, in fact, not a member of the Town of Milton, we're outsiders looking in at you, so that when we now come back to you with a recommendation or an Advisory Report, you're getting the feeling of seven, as many as seven individuals, who have reviewed everything that was brought to us, that we were able to discern coming out of the Code, with input from professionals, the attorney, your own town staff and of course, any engineering staff that may be involved. So to answer your question, nothing has really changed and that's part of what we are writing about. We don't want it to change. We do want as much input for not only ourselves and no, we don't have every possible engineering degree in the world. We don't. And I would then say, how many of the personnel within the Council have a background of politics? I don't know. I'm not going to answer that question. It's a rhetorical one. My statement is simple. We do not want that particular portion of the Code to be changed and if, and I guess maybe we can talk about that, you can talk about that; if indeed there's something that should never come out, even though it's supposed to based on the Code, maybe there's something we could rewrite within that portion of the Code.

<u>Vice Mayor Booros</u>: And that's what we're asking, that the word "shall" be changed to "may", so that this didn't have to go to you; but it did go to you because the Code says it has to go to you. Okay? The Code says it has to... That's our...

Don Mazzeo: I understand your position.

<u>Vice Mayor Booros</u>: That's my position. This never should have gone to you for 45 days. It should have been taken care of, the ordinance could have been written in accordance with the FCC law and that would have been the end of it.

<u>Don Mazzeo</u>: And I hope you understand our position. It should have stayed right here in Council.

<u>Vice Mayor Booros</u>: But it can't, because the Code said we have to send it to you. That's the problem. It's a change to the Ordinance. It has to go to you.

<u>Don Mazzeo</u>: Excuse me, if I may, how did you learn of the paperwork that you brought here this evening?

<u>Vice Mayor Booros</u>: I got calls about the paperwork, from people who don't want to move their satellite dish to the backyard and they said...

<u>Don Mazzeo</u>: Then why wasn't that brought out at the time of the Historic Preservation meeting happened?

<u>Vice Mayor Booros</u>: Because they came last week. I wasn't at that meeting.

<u>Don Mazzeo</u>: These are the same people that are now complaining. I will sit down at this point.

Mayor Jones: Councilwoman, did you want to ask anything else?

Councilwoman Parker-Selby: No.

<u>Mayor Jones</u>: If the Council is okay with that, I certainly would, if you'll come to the microphone.

Sam Garde, 115 Sassafras Lane: I would just like to hear the Town Solicitor repeat the thing that he thinks is ambiguous, because from a legal, not a political, but a legal perspective if I heard you correctly, our Solicitor thinks that we are clarifying an ambiguity and I'm not certain that we either or are not, because the 98 had certain very specific things; 99 is general and it may be that there is some way to look at 98 and 99 and satisfy both Vice Mayor Booros and the Planning and Zoning Commission on levels of specificity, so will you please repeat the ambiguity.

Seth Thompson: Certainly. In 98 it discusses the fact that an amendment can really come about by one of three ways; whether it's the Town Council on it's own motion, by petition, or by recommendation of the Planning and Zoning Commission; but then you have 99 that says well every amendment has to go to Planning and Zoning. If the Council doesn't vote to change "shall" to "may", in my mind, to fix the ambiguity you would then take out the language in 98 that discusses those three different avenues. In other words, if everything has to go to Planning and Zoning, then you might as well remove the language that talks about Council doing it on it's own motion. Then it would be clear that it always had to go to Planning and Zoning. I hope that... To clarify, it should go one way or the other.

<u>Sam Garde</u>: My thought, rather than vote, is that you may have opened a way to clarify in 98 those things that the Council wants to maintain and let the redrafting of 99 say everything that wasn't done in 98 shall go to Planning and Zoning and you may be able to satisfy everybody, as a thought.

Seth Thompson: I think that's a very good thought, in terms of drawing a line, where

certain items do go to Planning and Zoning and certain items don't need to go to Planning and Zoning. The difficulty is drawing that line. In terms of trying to draft language to anticipate every single, potential change to your zoning ordinance, the problem is you're going to end up with some relatively subjective work. You're going to end up with a substantial change or a non-emergent change; something that's going to require interpretation. That's the difficulty. Where do you draw the line, in terms of drafting the language? But I think the point is well taken and really that would be the ideal. I suppose the justification for using the "may" is that the Council should use their discretion wisely and that sort of thing, in doing just that; but people like to have that discretion codified if they can. The only thing is it's just going to be difficult to anticipate every possible scenario. You would seemingly say non-substantial, but then you need to define what's substantial. What's substantial to me might be different than what's substantial to somebody else. Same thing if you put in a timeliness argument. That also opens the door where people, they're encouraged to wait, so that there is a rush on the issue and that's not necessarily the best policy either. But I think Mr. Garde's point is well taken and that's really what the discussion is, is can we have some sort of potential carve-out where Planning and Zoning gets everything, except for certain items. Mayor Jones: That's tough.

<u>Vice Mayor Booros</u>: On that note, I never would have thought that the two items that I gave examples of were going to pop up, but there are so many things in the zoning ordinance that may pop up, that I don't know how you would predict what's... <u>Councilwoman Patterson</u>: I have to agree. I think it would be cumbersome to try to actually navigate all of that and try to figure out what we should and what we shouldn't. To go back to what Councilman Collier said, it's not us usurping the power of Planning and Zoning. It just gives us an option. There are times we need expediency and times that we actually need things to go to Planning and Zoning and I think that's what this ambiguity is that we're trying to clear up.

Mayor Jones: Councilman West?

Councilman West: I have no discussion on this, because it would cause a mess of diversity. I said I've got no comments on this because it would cause a mess of diversity. Mayor Jones: Okay. Well I have a couple of things to say, though I have to agree that Mr. Garde's point is well taken and I think it should be considered very seriously here this evening; however, a couple of things that I find that this issue of changing of "shall" to "may" does not address, to me, the heart of the matter which is also a time process; which is arguably one of the things we are all working on to try to streamline something. So to me, the changing of "shall" to "may" does not necessarily address that point. The points on Mr. Mazzeo's letter, or rather I shall say Planning and Zoning Commission's recommendation, item number three, we believe this action creates an environment of uncertainty for prospective businesses and investors. I can't say I disagree with that and Mr. Thompson taught me my first year on Council about a land use item, that that is something that you cannot take away from a developer that you hope to come into your Town and invest. That there should be something in writing and something they can rely on to know how the process can go for them. That concerns me in the context that I have lived through governments that are relatively powerful to do a number of things; maybe they've been done properly, procedurally; maybe they have not. With "shall" sitting in here, it at least assures that checks and balances, to me I have lived through that. It is

why I expressed that to all of Council. If you have someone who has come before you and you have an extremely subjective Council, I just can't say that that is an ideal situation. If we can all be assured that Council practices objectivity, that would be a wonderful situation; but you can't be guaranteed that and that's why I might be willing to defend the word "shall" remaining; but I do also see many examples just since April, where streamlining has definitely been an issue. What I would like to bring up, since it's been brought into the record, however, is the last item on the letter from Planning and Zoning which says this action, which is intended to create a more business-friendly environment and I underlined this in red, does nothing to address what we believe are the real obstacles to business development here in Milton. However, my copy comes with no recommendations of what real obstacles they believe are here in Milton, so Mr. Mazzeo at our first convenience, I would like to have a meeting. It's ambiguous and I wish I had some more detail, because to me, it may address exactly what we're looking at tonight. Are we looking at a zoning issue or are we looking at something else? Are we looking at a Council power or are we looking at something else? That statement in this letter to us, concerns me and those are my opinions about this particular item this evening. I would be willing, if there's no other discussion, to entertain a motion; I suppose Mr. Thompson would say to table this to look at it... Is that right? <u>Seth Thompson</u>: That's certainly fine. Again, Council doesn't have to act on any of these, but this is the public hearing; this is just part of the process. You don't have to act on any of these tonight, but what you're doing is you're following what's required under your Code and under the State law and giving the opportunity for some public input and getting a little bit of the public input.

<u>Mayor Jones</u>: And we don't have to table this at all. I don't mean to lead you in that direction. If we are prepared to vote this evening, then by all means, the agenda states that we are prepared to vote this evening.

<u>Seth Thompson</u>: But you certainly can table it, if that's Council's wishes.

Mayor Jones: I understand.

Councilwoman Parker-Selby: I'm kind of going along with that. I'd like to get to a meeting and talk to some of the people; since that was the only Commission I served on, basically. I understand totally where they're coming from, with this, however I am on the other side of the table here, where this timeframe and some of the things that don't need to go, such as Vice Mayor Booros has said; so I'm kind of in between here. I need more clarification or more how can we all just clarify everything so everybody understands what we're doing here and not leaving anyone out, because I'm definitely on we have to have due process and make sure everybody has input. That's a way of life.

<u>Vice Mayor Booros</u>: There's always a public hearing, also before an ordinance is changed. That gives everybody an opportunity for input.

<u>Councilwoman Parker-Selby</u>: I understand that, but I mean we say alright no or _____. I like, well... I'm like you. What are these obstacles they're talking about and the other part of it, I'm just still totally a little bit in the middle here, with what they're saying, so I'm not ready to vote yet. I want a little bit more conversation with the folks on Planning and Zoning, I guess. That's my personal opinion, me. So I'm for the tabling, if that's possible.

Seth Thompson: Was that a motion?

Councilwoman Parker-Selby: Oh well, am I making a motion? Well I'll make a motion

that we table this until further investigation and discussion with those involved. No seconds. I guess I'm _____.

Mayor Jones: Hearing no second... Is there further discussion?

<u>Councilman Collier</u>: To me this changing it from "shall" to "may" sometimes that allows for some streamlining because now I'm getting really out here in left field with this statement. If, for some reason, our Zoning Code said every front door in Milton must be painted red and the State came along and passed an Ordinance and said everyone must be white? Do we have to refer this to our Planning and Zoning or can we simply make...

Vice Mayor Booros: It's all the rest of this stuff.

Councilman Collier: Another, out in left field, is _____ if we noticed all of a sudden, there should be a comma here instead of a semi-colon and it makes all the difference in how you interpret it. Do we have to send that to Planning and Zoning to make that simple change? I didn't look at this idea when the concept first came forward. This was a thing that there are sometimes when immediate action is called for and I look for the change from "shall" to "may" for immediate action, but I would be willing to say 90% of the time, my first thought is to send it to Planning and Zoning, but there are those little isolated times where I think that it's best to just take care of it and move on. Councilwoman Patterson: I think that's where I'm coming from too and for expediency and I know that sometimes holds us up and I understand the Mayor's concern with future Council's motives, but Council is an elected body by the Milton townspeople to do their work and I will tell you it's a very vocal community. I mean, they're very vocal with all of us council people. Again, I don't think we're trying to usurp power, because it's still as "may" and a lot of things need to go to Planning and Zoning. But it just streamlines things a little bit, at least that's the way I looked at it.

Mayor Jones: Councilman West, we really would like to hear from you.

<u>Councilman West</u>: Well, to me it seems like some of these Committee's in this Town want to have more power than the Council does; instead of working together, they don't want to work together. I feel that we should adopt this, that it gives the Council the option to weigh in on the situation and then, if they feel that it's necessary, then send it to Planning and Zoning; not just automatically do it.

Vice Mayor Booros: Everybody's weighed in.

<u>Mayor Jones</u>: I believe there's been ample time for discussion offered to each and every Council...

<u>Vice Mayor Booros</u>: I make a motion that the Ordinance, as amended, changing the words from "shall" to "may" and the other word, be accepted as amended.

Councilman West: I second that motion.

<u>Mayor Jones</u>: Any discussion? Mr. Thompson does the changing, the modification of 220-99 then put 220-98 more in compliance, one to the other?

<u>Seth Thompson</u>: It does. It makes it clearer. They match up better in the sense that then Council, on it's own motion, would be able to change it, rather than waiting for a recommendation from Planning and Zoning. In other words, you wouldn't have to change 98, if you're changing 99, as this ordinance proposes.

Mayor Jones: Do you need a roll call vote?

Seth Thompson: It would be helpful.

Mayor Jones: Okay, then we will start with Vice Mayor Booros:

Vice Mayor Booros Yes
Councilman West Yes
Councilwoman Patterson Yes
Councilwoman Parker-Selby No
Councilman Collier Yes
Mayor Jones No

Mayor Jones: The motion is carried.

Seth Thompson: It isn't, because it has to pass by...

Councilman Collier: Yes, it's only two-thirds.

Seth Thompson: Right.

Mayor Jones: Okay. Thank you for correcting that.

Seth Thompson: It needs to be 80%.

<u>Vice Mayor Booros</u>: So when will it come back again?

<u>Mayor Jones</u>: I highly suspect it will come back again when we put into motion the review of the zoning, which, as you know... I'm sorry, you were not there. I charged Council that starting in February were we willing to put forth the financial investment to have Pennoni begin to look at some of those ordinances for us and Mrs. Rogers is securing a value for that, so that it will come... So I expect that this will make a sweep very soon and let's make sure that it does. Alright?

b. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning", relating to section 52 antennas, towers, and satellite dishes

<u>Mayor Jones</u>: Onto item b. Vice Mayor Booros, if you have more information about what you have, that's fine, otherwise I'd like to ask again about process. If these pieces were sent to Planning and Zoning and Planning and Zoning then, according to what we just went through, are given 45 days to refer this back to Council...

Vice Mayor Booros: With their recommendations.

<u>Mayor Jones</u>: With their recommendations. I'm asking, where is this recommendation? <u>Vice Mayor Booros</u>: Quite honestly, we shall send it to you, but we sure as heck didn't get back a recommendation.

<u>Mayor Jones</u>: Well, I want to ask about the process. Where is this not working for the recommendation to reach Council?

Seth Thompson: Okay and part of it, just to be clear, the 45 days means that Council can go ahead and act without the Advisory Report, without the recommendation. That's the way the Code is set up. Part of this and I think Mr. Mazzeo, correct me if I'm wrong, but part of this I handed out this information from the FCC to Planning and Zoning, which is what produced the notion that perhaps we need to treat the Historic Preservation District more rapidly, then dealing with the others and one of the Planning and Zoning Commission members met, I believe it was earlier this week, with a representative from Georgetown to find out how they have been implementing it. Really, one of the issues is the effective date. Are you going to ask people to remove or change what they've already installed; or is it something that's just proactive?

<u>Vice Mayor Booros</u>: I think this is clear, that you can't make it financially burdensome, so asking them to move it would make it financially burdensome.

<u>Seth Thompson</u>: Right and the issue is... there was an issue of ownership. In other words, who moves it; who has to pay for it? And so there was a little bit of research that needed to be done in terms of meeting with Georgetown to find out how apparently they've been fairly effective with this ordinance. So that's why Planning and Zoning hasn't issued a written report. Again the oral recommendation was to enact it as quickly as possible in the Historic District, because the FCC does treat the Historic District... <u>Vice Mayor Booros</u>; So does this ordinance that's in front of us, justify it in the Historic District?

Seth Thompson: It doesn't, no.

<u>Vice Mayor Booros</u>: No. So you've brought something for me to vote on here, that doesn't just apply to the Historic District.

Seth Thompson: That's right and again this...

<u>Vice Mayor Booros</u>: Then I say we table it until somebody writes an ordinance that's in compliance with the FCC regulation and not in compliance with what Georgetown's doing; because the wording in this document is no where like the wording in this document.

Councilman West: I'll second that motion.

<u>Mayor Jones</u>: Any discussion? All those in favor say aye. Opposed. Motion carried. I want to make sure I heard what you said and interpret it correctly in my mind, Mr. Thompson. Did you just say that Council can act before getting the recommendation back from Planning and Zoning?

Seth Thompson: If 45 days have elapsed...

Mayor Jones: If 45 days have elapsed, because I was going to say this document in my hand, that we just went over, would indicate that the only way Council could go forward is if that hasn't been received back. I have to agree that if we're sending it on for recommendation, I really don't plan to see it, or wouldn't want to see it, until I have something in my hand that gives me an idea of what we send it there for. I do agree with that. I think that's a point well taken, as well.

<u>Seth Thompson</u>: I think part of the difficulty is if Planning and Zoning receives something; they have their meeting; hopefully the same month as Council; they discuss it for the very first time, seemingly to get a written report approved; assuming they're just having one meeting a month, they would have to come to a conclusion at that meeting; have it written and then at the next meeting, have the written report or Advisory Report approved, so that's the difficulty, but the 45 days is also designed so that things can move quickly.

<u>Vice Mayor Booros</u>: Timing issue, Mr. Thompson?

Seth Thompson: That's exactly right.

<u>Vice Mayor Booros</u>: Timing issue, Mr. Thompson? Which was exactly Councilman Collier's issue and I think Councilwoman Patterson's issue, which we just defeated under a. and it's one of those things where they can't get it done in 45 days, unless maybe they have another special meeting to approve a report that's written.

<u>Seth Thompson</u>: That's a difficulty, but again the 45 days, if it elapses, then Council can act without the report. That's the way your Code has it structured.

<u>Mayor Jones</u>: May we, just on the issue of the satellite dishes, yet, perhaps I failed to read the penalty portion of this...

Vice Mayor Booros: There is none.

Mayor Jones: That's what I was going to say, it's titled regarding penalties...

Vice Mayor Booros: You're going to enact one more ordinance with no teeth.

Seth Thompson: What happens is, it falls under our General Penalties. Your zoning ordinance has a General Penalties Section, so occasionally your Code has a specific penalty in a specific section, which would override the General Penalties. This, basically, because it refers to the Fee Schedule, so that's why that language was being struck; because, again, a fine...

<u>Vice Mayor Booros</u>: What is the penalty, before you ask me to vote on it, what is that penalty?

Seth Thompson: I can look it up right now.

<u>Vice Mayor Booros</u>: And is it every day that they haven't gone? And interestingly enough if you read the FCC ruling on that thing, you can't make the time. If somebody is waiting for cable TV and they bought their house, you can't send it to Historic Preservation for 45 days waiting for Historic Preservation to come back to tell them where they have to place it, because then they don't have any television for 45 days and that's an undue restriction. We don't have any of that written into this Ordinance and like I said, I don't care how Georgetown did it, that doesn't mean they're right. We've had that discussion too.

<u>Seth Thompson</u>: But again, this is the difficulty in having a 45 day window. If there are issues that need to be researched and to see if they worked well in other Towns, the difficulty is we don't... Planning and Zoning doesn't get that back in time, in order to approve an Advisory Report.

Mayor Jones: Is it unrealistic?

Seth Thompson: No. No. I don't think it's unrealistic. It just depends on each case. That's the problem. Certain ordinances lend themselves to a very brief discussion, but then others are just going to take more time. If you're introducing an entirely new concept, then you're going to have to deal with issues like the effective date or retro-activity, that's what it's saying and certain ordinances you just don't have those issues.

Mayor Jones: But it doesn't give any grace period. It just simply says 45 days.

Seth Thompson: Your Code... I looked under the remedies, the Code Enforcement Officer would issue a written letter advising them that they need to abate the violation; it does give the Code Enforcement Officer discretion in terms of a date of compliance and then, if they haven't remedied it by that point, then it's a fine of \$100 to \$350 each week.

Vice Mayor Booros: So that takes it over that limit where we would have to go to Court.

Seth Thompson: It does. Well you couldn't keep it in the Justice of the Peace Court, they could transfer it to the Court of Common Pleas.

<u>Vice Mayor Booros</u>: Which means we pay a hell of a lot more than the fine's every going to be, to you. I'm sorry.

c. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning" related to Parking

Mayor Jones: This is related to parking.

<u>Seth Thompson</u>: Obviously there has been some parking discussion. This is kind of a broader discussion that fits in with the next ordinance as well, but typically when you have, whether it's an area variance or a use variance, a Board of Adjustment would deal with that, so what this ordinance is doing is taking it out of Planning and Zoning's hands

to deal with and really your Code said that Planning and Zoning Commission, could, without requiring a variance, waive certain parking requirements, presumably during the site plan process. This is putting the jurisdiction with the Board of Adjustment to grant a variance with regard to parking. There was one piece of language. It's on the second page. It said, "Parking shall be prohibited in the lawn area in front of...". The current Code reads "a residence"; which makes it sound like if it's not a residence, you can park in front of the building on the lawn; so that's why that is changed to "any structure". And, looking at the page after the chart, again we removed the language referring to the approval of Planning and Zoning. Your Town Center District doesn't have any parking requirements, currently, so that's why the TC is crossed out and then paragraph three is added under Sub-Section d. In terms of any off-street parking waiver, really it's a variance, the current wording is "waiver"; that would go to the Board of Adjustment; so if you have your churches that need a parking variance, then they would go to the Board of Adjustment. They wouldn't go to Planning and Zoning. I think it was written contemplating the only time somebody would change their parking, or would need something different for parking, is when they are going through the site plan process. That's the way it seems to me, but that just isn't realistic in Milton. You have people that currently have parking issues. They're not building a new structure. I think it is keeping more with the general theory that when you're providing a variance, it should go to a Board of Adjustment.

<u>Mayor Jones</u>: I want to make sure I understand General Requirements, a. 10. I interpret that to mean that every vehicle parked in someone's front yard is prohibited. <u>Seth Thompson</u>: That's correct. You're not supposed to park in a yard, in front of a building. The way it reads, you can park on the side of a building, in the grass on the side of a building, or in the backyard...

<u>Mayor Jones</u>: So you can park in the grass, beside your house, but not in front of your house?

<u>Seth Thompson</u>: Correct and again, because it said in front of a residence here, the implication of that is...

Mayor Jones: Structure.

<u>Seth Thompson</u>: Right. Currently, you would have a difficult time saying somebody couldn't park in the grass in front of their office building.

<u>Councilwoman Parker-Selby</u>: I'm sorry, suppose someone doesn't have a side, or any sides to the building; that's all they have to park on and they don't have the funds maybe to slag or do something to make a parking area in the front of the house... Are they going to be in jeopardy?

<u>Seth Thompson</u>: There's potentially an issue of pre-existing, non-conforming... <u>Councilwoman Parker-Selby</u>: I've seen that here in the Town, that's why I'm saying that. There are resident's here who have had to do that over many years; there's no property to park anything, but right there in the front. Not everybody.

<u>Seth Thompson</u>: As long as they're doing it forever, then seemingly it's a pre-existing non-conforming use of that property. It's going to depend on the specific facts, but just because a car moves, doesn't mean that the use ceases. It would kind of be like if a factory is operating and it closes down for the night, that commercial use didn't stop. <u>Mayor Jones</u>: Councilman Collier, do you have anything to add? I know you're looking at the paperwork.

Councilman Collier: I'm pulling on what I know is history and having sat on the Board of Adjustment when it was first formed in Milton, the Board of Adjustment had wide and varied powers at that time and town government, in it's wisdom, decided to streamline those back, because they thought they had too many powers. I'm just wondering if this was written... I know that somewhere within the ordinance and unfortunately I'm not real good at fumbling through the book, it defines what they may act on and I'm wondering if this is contrary to what it says in another part of our ordinances; because my last memory, at least when I sat on the Board of Adjustment, we got restricted to the point where the only thing we could act on were variances, as far as height, width and bulk and parking is beyond height, width and bulk.

<u>Seth Thompson</u>: I will check, but it is cross-referenced, if you see that in Article XI, the Board of Adjustment and it's a little bit more expansive then that currently. Let's see, it includes area variances, so because you're talking about parking spaces, that would seemingly fall under area variance. In other words, your parking lot doesn't have to be X feet wide by X feet long.

<u>Councilman Collier</u>: If you're satisfied that that's how it works, then I guess I am too, because you would be the guy that would have to interpret it, if we get questioned on it. <u>Seth Thompson</u>: Right, but that's interesting that at one point you were limited to just setbacks, basically, is that it?

<u>Councilman Collier</u>: Essentially that's it. Setbacks and height, width and area. Because I can recall, actually it was the Town Engineer that brought it forth, because we acted on some variances within some street widths and some other things like that and they brought it forward and after that, we were pretty well limited. It was okay with me. It took a lot off our plate, but I just don't want to see us put something into the fact that we've automatically created something that's in conflict with another portion of our Ordinance and I couldn't recall exactly where it was and I have trouble fumbling through this book, because it doesn't give you a really sweet index.

Seth Thompson: It's 220-82, starts the Board of Adjustment and actually that does kind of dovetail with the next ordinance, as well. Just for the rest of Council, in 220-83 it discusses the fact that the Board of Adjustment shall have the power to grant area variances, authorizing a use of the land, which otherwise would not be allowed or would be prohibited by the terms of this chapter, meaning the zoning ordinance. So, again, when it comes to parking, you would go to the Board of Adjustment and say I'd like to have a smaller parking lot, or I'd like to have a different amount of parking spaces.

Mayor Jones: The Board of Adjustment's guidance also comes from proving hardship, to

<u>Mayor Jones</u>: The Board of Adjustment's guidance also comes from proving hardship, to grant the variance.

Seth Thompson: It does. That's right. This isn't saying it's automatic.

<u>Mayor Jones</u>: So how is it... Okay, I guess I don't know how you apply that charge to parking.

<u>Seth Thompson</u>: Well, you cold. Typically, hardship is based on the physical attributes of a piece of property, that for some reason it just doesn't... for whatever reason it's an odd-shaped parcel, that sort of thing, so parking spaces just aren't' going to be available; maybe it's a triangular lot, that sort of thing, that wouldn't lend itself to certain parking, but maybe they have a neighbor, and this is often the case, where one parcel has an agreement with their neighbor to then use the neighbor's adjoining parking lot, because they have a different power of operation. Basically the Board of Adjustment would have

to review their application and the applicant would have to show that undue hardship and how they intended to still safeguard the public. And just for the exact language, it's "The Board of Adjustment, in it's discretion, shall grant an area variance. The minimum variance that is deemed necessary and adequate and at the same time, preserve and protect the character of the neighborhood and health, safety and welfare of the community." And then it goes on to authorize imposing conditions with the variance. That's basically what we were talking about.

Mayor Jones: Any further discussion on this?

<u>Councilwoman Parker-Selby</u>: Well only Board of Adjustment is what we're looking at taking from Planning and Zoning to Board of Adjustment is parking; but I'm looking here at the hotels and the motel, which was a conversation out there, where I am and that, definitely to me, is a Planning and Zoning piece, so they're going to work hand in hand; they would have to work hand in hand if that should ever happen.

Seth Thompson: Right. Basically and again we're not changing the requirements, in terms of parking spaces; that's that chart. If there was a hotel that bought a parcel and for whatever reason their parking lot couldn't meet our requirements, let's say they bought an existing house and they plan on changing it into a motel or a hotel, but because it was a house it didn't have a very large parking lot, but there was some other means for them to address their parking needs; it just wasn't on that particular lot, they would first go to the Board of Adjustment and get a waiver of a certain number of parking spaces, basically; and then they'd go to Planning and Zoning with their site plan showing... and that's assuming, of course, the Board of Adjustment felt satisfied that they had proven that they have a hardship and that they can still adequately protect the public, with whatever arrangements they've made; so they would go to the Board of Adjustment first, get the waiver, then go to their engineer, have the engineer draw up their site plan and then submit that to Planning and Zoning.

<u>Mayor Jones</u>: And if I may add to that, that parking lot on the site plan for Planning and Zoning's review, has no standard for how much lighting is necessary to light that parking lot. Am I correct?

<u>Seth Thompson</u>: Right, we don't have a specific... you have to have X number of lights per X number of spaces. It's a reasonableness standard.

Mayor Jones: A reasonableness standard?

<u>Seth Thompson</u>: In other words, Planning and Zoning's ability, whenever it's approving a site plan and again the process is a preliminary site plan, then they would seemingly attach conditions, if they didn't feel like the lighting was adequate, but we don't have something that says if you have ten spots, you need five lights.

<u>Mayor Jones</u>: Literally, the site plan could come with no lighting on it and we have no standard to impose how much lighting, how much lighting.

<u>Seth Thompson</u>: Well, that's correct, but Planning and Zoning wouldn't have to approve a plan that had no lighting whatsoever.

<u>Mayor Jones</u>: I understand that, but it doesn't make the plan... it does not make the plan that is presented to Planning and Zoning require lighting.

<u>Seth Thompson</u>: I think one of the items that they have to show on their preliminary site plan is lighting; I'm just going off of memory, but they do have to show that, but in terms of a specific requirement, no, it's going to be on the property owner to produce something that is likely to satisfy Planning and Zoning. If it doesn't satisfy Planning and

Zoning, then part of their preliminary site plan approval, would seemingly be you need to add X number of lights.

<u>Mayor Jones</u>: But if they denied it, they have no standard to fall back on why they denied it, because it didn't meet our requirement. My point is it's one more piece to the problem at hand. One of the reasons why we're here tonight. Lighting. Parking lots. Spaces. Lighting. Okay, it's a little off, but... You're looking for a motion to approve this, as amended?

Seth Thompson: The one item and it looks like it didn't make it into the printed item, but Planning and Zoning had recommended that we include a list... that the ordinance include a list of materials that the Town currently permits, with regard to surfaces. You can see that when I drafted it, because I didn't have that information, I put the brackets. I know that Bob Kerr forwarded that information. Kristy's looking at me. I know that Robin received that from Bob Kerr, but the reason for that was to put people on notice in terms of what would... It's kind of like what you were talking about with regard to the lighting. It would tell people that these are the appropriate surfaces for your parking lots, so it can't be approved, as it's currently written, based on the fact that instead of listing the items, it says Insert List of Materials. My suggestion would just be to table it, get the information from Mr. Davis and have it on the next calendar.

Councilman Collier: Move to table.

Councilwoman Patterson: Second.

Mayor Jones: Any further discussion? All in favor say aye. Opposed. Motion carried.

d. An ordinance to amend Chapter 220 of the Town Code, Entitled "Zoning" related to Special Uses

Seth Thompson: This really does dovetail with what we were talking about previously and it sounds like Councilman Collier can give us some history on it, but the way your zoning ordinance currently reads, the special use permits currently go to Planning and Zoning. They don't go to the Board of Adjustment. So when you think about zoning and uses, there are the permitted uses, the automatically approved uses. You have some automatically approved accessory uses and then, with certain uses, under your Code that are seemingly deemed to need some additional attention in order to make sure that they're in keeping with the character of the neighborhood and the neighbor's are protected, the person has to get a special use permit and that special use permit process, often involves conditions. A good example might be if it's a restaurant, they're only allowed to have outside music up until a certain time; or they're only allowed to operate up until a certain time; that sort of thing. So it's really more in line with what some Towns call a use variance, or special use exception. You guys call them special uses or special use permits and that tends to be more of the jurisdiction of the Board of Adjustment and for whatever reason, your Code has it going to the Planning and Zoning Commission. From a theoretical standpoint, the Board of Adjustment tends to be more quasi-judicial. In other words, they're kind of acting as a Judge; that somebody presents this application and their evidence and says, this is my case. This is why I think I should get this special use permit vs. Planning and Zoning, which is supposed to be more of an administrative body. Here are the requirements. You meet those requirements. Onto the next step. It could have been that you didn't have enough people, at one point, to have an active Board of Adjustment and you didn't want to hold up development. I'm just

speculating as to why you did it that way; not you, but your predecessors.

Councilman Collier: History lesson, at one time the Planning and Zoning Board and the Board of Adjustment were one and the same and some nights they would put on their Planning and Zoning hat and meet and then turn around and turn it backwards and act on an action they just had previously heard that required a variance and it was determined that they needed to separate the Boards. The issue I would have, with putting... I don't know, maybe I misunderstood. If I understood you correctly, you're talking about some of this stuff like Special Permitted Uses becoming the jurisdiction of the Board of Adjustment?

Seth Thompson: Correct.

<u>Councilman Collier</u>: Well that's the first thing. I don't see that it states that necessarily. Secondly, anything that goes before the Board of Adjustment only has one place to be appealed and that would be in a Court, Superior Court?

Seth Thompson: Right it would go to Superior Court.

<u>Councilman Collier</u>: And, that's really a terrible burden to put on any board, really. Talk about lengthening the process...

<u>Seth Thompson</u>: Well, I suppose it could be a longer process, the way it is currently, in that it could still be taken to a Court, it's just that from Planning and Zoning they take it to Council and then they take it to a Court.

<u>Councilman Collier</u>: Exactly, but I don't know... Well, first of all, the way this is written, I didn't see Board of Adjustment noted anywhere in this thing to start with, unless I overlooked it.

<u>Seth Thompson</u>: It should be underlined. You should see Planning and Zoning crossed out, the strike through and then...

<u>Councilman Collier</u>: Okay, well I get to the second page, there's three; Special Permitted Uses in the very last...

<u>Vice Mayor Booros</u>: Quite honestly, this ordinance is for one reason and one reason only and that's to take home occupation away from Special Permitted Use. It has nothing to do with going to anybody else but Planning and Zoning. It takes it away and it puts it at the discretion of one person in Town Hall and I don't think this is something we ought to decide on tonight.

<u>Seth Thompson</u>: Sorry to interrupt, but I think that the packets have a different draft ordinance, than the one that's noticed.

<u>Vice Mayor Booros</u>: Well then I say we table this until we get the proper information.

<u>Councilman Collier</u>: Because I don't see Board of Adjustment mentioned anywhere.

Councilwoman Parker-Selby: I didn't see it.

<u>Seth Thompson</u>: That would explain some of the confusion. Your website had the right one on it, I checked that today.

<u>Vice Mayor Booros</u>: Just curious. Is this one that we're talking about, the change come out of Planning and Zoning? Did they just say yes, go ahead and let Robin make that decision?

Seth Thompson: No, the home occupation was discussed last night.

Vice Mayor Booros: At Planning and Zoning?

Seth Thompson: Right. It shouldn't...

Vice Mayor Booros: So we shouldn't have had it this quickly.

Councilman Collier: This doesn't look anything like what I'm reading.

<u>Seth Thompson</u>: I have the feeling that... I just think that the incorrect draft ordinance was handed out. Again, the website had the correct one. It makes sense to table it, if you guys haven't seen the correct one.

<u>Councilman Collier</u>: This document looks nothing like the document that you just shared with me and maybe that's where I'm confused.

Seth Thompson: Councilman, that makes perfect sense to me now. I apologize. Again, the one that relates to special uses and that's the way it's titled and that's what's on the agenda, effectively is changing the words Planning and Zoning Commission to Board of Adjustment. The only other item that it does, in terms of the standard for granting a special use permit, the way the Code currently reads, it says "that it will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood or such proposed use will not be detrimental or injurious to the property and improvements in the neighborhood of the general welfare." I added the word "substantially" to make it more in line with what governs other municipalities. The problem and again, I don't like words like substantially, if we can avoid them. I like a more objective standard. The difficulty is without the word substantially in there, arguably one neighbor says that he was kept up one night; then it's debatable that it's detrimental to that one neighbor. So that's why the word substantially needs to be in there. This is kind of a premature discussion if Council hasn't looked it over.

<u>Councilman Collier</u>: I kind of think so too, so I would move to table this until we have the...

Vice Mayor Booros: We have a motion and a second on the floor.

<u>Councilman Collier</u>: To do what? <u>Vice Mayor Booros</u>: To table it.

Councilman Collier: Oh, we do? Okay.

Mayor Jones: Any discussion? Councilman Collier: Okay.

<u>Mayor Jones</u>: We didn't say so in the others, but in this tabling it also until we get a recommendation back from Planning and Zoning; not just a proper, so that we're all on the same page and I apologize you did not have the proper information in your packages, but I know we can't go back and re-vote on the others that were tabled, but this one, until we get a recommendation may we add that?

<u>Seth Thompson</u>: You can. If I'm not mistaken, I'm going off memory, but I think their minutes were supposed to serve as the recommendation for this one.

<u>Mayor Jones</u>: Okay. Is there any further discussion? All those in favor of tabling say aye. Opposed. Motion carried.

7. Adjournment

Mayor Jones: Do I have a motion to adjourn?

Councilman Collier: So moved.

Councilwoman Parker-Selby: Second.

Mayor Jones: All those in favor say aye. Opposed. Motion is carried. Meeting adjourned at 7:18

p.m.